



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 6, 1996

Mr. Ron M. Pigott
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR96-0152

Dear Mr. Pigott:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 36783.

The Department of Public Safety (the "department") received a request for "all files, records, and any other documents in the possession of the Department of Public Safety pertaining to the arrest, investigation and trial of Fran and Dan Keller, cause nos. 91-4217 and 91-4220 in the 147th District Court of Travis County." You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claimed and have reviewed the documents at issue.

The requestor contends that the department did not comply with the ten-day deadline to seek an opinion from this office imposed on governmental bodies by section 552.301 of the Government Code. You claim that the request was sent to the address for a central cash receiving box rather than the address for "regular mail." If a governmental body does not meet the ten-day deadline, the requested information is presumed to be public. Open Records Decision No. 195 (1978). However, this presumption may be overcome by a demonstration that compelling reasons exist as to why the information should not be made public. *Id.* As we conclude that the requested information is confidential by law, a compelling reason, we need not address whether there was a violation of section 552.301 of the Government Code.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 261.201(a) of the Family Code provides:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

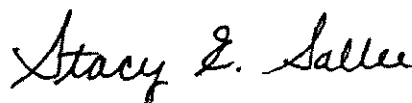
(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report;

(2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.¹

(Footnote added). The other provisions of section 261.201 do not appear to apply here. We are not aware of any rules promulgated by the department which permit the dissemination of this type of information. Accordingly, we agree that the requested information is made confidential by section 261.201 of the Family Code and must be withheld from disclosure under section 552.101 of the Government Code. *See* Open Records Decision No. 440 (1986) (applying former Fam. Code § 34.08). As we resolve this matter under section 552.101, we need not address the applicability of sections 552.103 and 552.108.²

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee
Assistant Attorney General
Open Records Division

SES/ch

¹Section 261.201 was added to the Family Code in the last legislative session and became effective, as amended, on September 1, 1995. Act of April 6, 1995, 74th Leg., R.S., ch. 20, § 1, 1995 Tex. Sess. Law Serv. 113, 262 (Vernon); Act of May 25, 1995, 74th Leg., R.S., ch. 751, §§ 93, 129, 1995 Tex. Sess. Law Serv. 3888, 3924, 3933 (Vernon). We apply the new law, as the request for information was received by the governmental body after September 1, 1995. However, we note that the result would be the same regardless of which law we applied to the requested information.

²We note that, as the requested information is confidential by statute, a mandatory confidentiality provision, this confidentiality cannot be waived.

Ref.: ID# 36783

Enclosures: Submitted documents

cc: Mr. Michael B. Charlton
Law Offices of Michael B. Charlton
4515 Yoakum
Houston, Texas 77006
(w/o enclosures)